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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/560,431	12/14/2005	Arnd Buchwald	03100264AA	8844

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WHITHAM, CURTIS & CHRISTOFFERSON & COOK, P.C.
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RESTON, VA 20190

EXAMINER

LEAVITT, MARIA GOMEZ

ART UNIT	PAPER NUMBER
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1633

MAIL DATE	DELIVERY MODE
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06/01/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/560,431	Applicant(s) BUCHWALD, ARND	
	Examiner Maria Leavitt	Art Unit 1633	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-14 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Because it is unclear whether the claims filed on 12-14-2005 are drawn to products or methods claims, for the purpose of a compact prosecution claims have been interpreted as methods claims.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

- I. Claims 1-7, 12 and 13 drawn to the use of a VEGF receptor gene for a composition for the treatment of arteriosclerosis and ischemia.
- II. Claims 8-11, 12 and 13 drawn to the use of a VEGF receptor gene to treat arteriosclerosis and ischemia.
- III. Claim 14 drawn to a stent or catheter for use within blood vessels comprising an effective amount of a VEGF receptor gene.

The inventions listed as Groups I, II and III do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical reasons:

37 CFR 1.475 (c) states:

“If an application contains more or less than one of the combinations of categories of invention set forth in paragraph (b) of this section, unity of invention might not be present”

37 CFR 1.475 (d) also states:

“If multiple products, processes of manufacture, or uses are claimed, the first invention of the category first mentioned in the claims of the application and the first recited invention of each of the other categories related thereto will be considered as the main invention in the claims, see PCT article 17(3)(a) and 1.476(c)”.

The inventions listed as Groups I, II and III do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical reasons: the technical feature linking groups I, II and III appears to be that they all relate to a novel use of the VEGF receptor gene or gene product in the prevention or treatment of restenosis, ischemia and arteriosclerosis and, in a general manner, in connection with conditions which are linked to an overshooting proliferation of the blood vessel wall cells. However, prior art teaches that VEGF is a potent angiogenic cytokine that has been administered to patients to stimulate neoplastic growth (Epstein et al., Circulation 2001, 115-119). Therefore, the technical feature linking the invention of groups I, II and III does not constitute a special technical feature as defined by PCT Rule 13.2, as it does not define a contribution over prior art for the reasons set forth above.

The inventions listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical reasons:

Each method wherein a VEGF receptor gene is used to prepare a composition comprises steps that structurally and biochemically different from a method of treating a patient for arteriosclerosis and ischemia. Moreover, a catheter comprising an effective amount of a VEGF receptor gene is structurally different from any method of preparing a composition or treating a

patient comprising a VEGF receptor gene. Because these inventions are distinct for the reasons given above, and are separately classified and searched, it would be unduly burdensome for the examiner to search and examine all of the subject matter being sought in the presently pending claims, and thus, restriction for examination purposes as indicated is proper.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Maria Leavitt whose telephone number is 571-272-1085. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Woitach, Ph.D can be reached on (571) 272-0739. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

To aid in correlating any papers for this application, all further correspondence regarding his application should be directed to Group Art Unit 1636; Central Fax No. (571) 273-8300. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to (571) 272-0547.

Patent applicants with problems or questions regarding electronic images that can be viewed in the Patent Application Information Retrieval system (PAIR) can now contact the USPTO's Patent Electronic Business Center (Patent EBC) for assistance. Representatives are available to answer your questions daily from 6 am to midnight (EST). The toll free number is (866) 217-9197. When calling please have your application serial or patent number, the type of

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document you are having an image problem with, the number of pages and the specific nature of the problem. The Patent Electronic Business Center will notify applicants of the resolution of the problem within 5-7 business days. Applicants can also check PAIR to confirm that the problem has been corrected. The USPTO's Patent Electronic Business Center is a complete service center supporting all patent business on the Internet. The USPTO's PAIR system provides Internet-based access to patent application status and history information. It also enables applicants to view the scanned images of their own application file folder(s) as well as general patent information available to the public.

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ANNE M. WEHBE, PH.D
PRIMARY EXAMINER

